

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDEN WALLACE,	§
	§
Defendant Below-	§ No. 631, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0907027836
Plaintiff Below-	§
Appellee.	§

Submitted: July 29, 2011

Decided: September 27, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 27th day of September 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Branden Wallace, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). Among other things, Wallace contends that the evidence presented at the VOP hearing was insufficient to sustain the Superior Court's findings. We find no merit to Wallace's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Wallace pled guilty in February 2010 to second degree conspiracy. The Superior Court sentenced him to two years at

Level V incarceration to be suspended for one year at Level II probation. Upon reporting to the probation office, Wallace provided the intake officer with the address of his residence in Newark. Several days later, Wallace was involved in a domestic incident with Johanna Garcia, another probationer who lived with Wallace in the Newark home. Wallace was arrested for offensive touching and a no contact order was placed against him. On his next visit to his probation officer on March 18, 2010, Wallace was informed that he needed to find a new residence because of the no contact order. Wallace immediately provided the officer with a Wilmington address. The probation officer testified that he did not officially change Wallace's address in the probation office's computer system because he first wanted to check out the address and determine it was appropriate.

(3) On April 1, 2010, another probation officer (not Wallace's assigned officer) was performing compliance checks, along with other members of a task force, in the Newark area. They went to the Newark home, which was still listed as Wallace's home address, looking for Wallace. One of Garcia's teenaged children answered the door and told officers that neither Garcia nor Wallace was home. The officers were allowed into the home and performed a safety sweep of the home to make sure neither probationer was inside. During the sweep, the probation officer found drugs in plain view

in the bedroom that the teenager had identified as being shared by Wallace and Garcia. Thereafter, the office obtained authorization from his supervisor to conduct a full search of the premises. The search of the house and a car parked in front of the house (registered to Wallace) uncovered cocaine, heroin, paraphernalia, bundles of currency totaling \$2000, weapons and ammunition. During the search, Garcia arrived home and was arrested. She later admitted that the heroin and some of the money belonged to her but that that guns and cocaine belonged to Wallace. At the conclusion of the contested VOP hearing, the Superior Court found Wallace in violation of the terms of his probation and sentenced him to two years at Level V incarceration to be followed by six months probation. This appeal followed.

(4) Wallace raises several issues in his opening brief on appeal. First, Wallace contends that he was denied his due process and equal protection rights because his probation officer failed to properly update his address in the probation computer system. Next, Wallace contends that the evidence at the VOP hearing was insufficient to prove that he violated probation. Third, Wallace contends that the Superior Court erroneously admitted Garcia's statement at the hearing and violated his confrontation rights. Wallace next asserts that the trial judge exhibited bias against him and

erroneously found him in violation. Wallace also contends that the probation officer who conducted the search of Garcia's residence committed perjury.

(5) We find no merit to any of Wallace's contentions. Wallace had no constitutional right to have his address immediately updated in the probation system in order to avoid having probation officers look for him at the home where he actually resided.¹ The probation officer testified that probation guidelines allow officers thirty days to conduct a home visit of a new address in order to make sure it is an appropriate environment for a probationer. The officer was provided the Wilmington address on March 18, 2010 and had not yet performed a home visit before officers conducted the search of the Newark address on April 1. We find no violation of Wallace's rights due to his probation officer's failure to immediately update his home address in his probation record.

(6) Moreover, we find no merit to Wallace's complaints about the admission of hearsay evidence and the sufficiency of the evidence presented against him at the VOP hearing. In a VOP hearing, unlike a criminal trial, the State is only required to prove by a preponderance of the evidence that the

¹ Garcia told officers that Wallace had stayed at the address after the no contact order had been entered. Officers also found mail addressed to Wallace, his driver's license, men's clothing and Wallace's latest tax return, among other things, in Garcia's house during the search. Moreover, a later interview with Wallace's mother, who lived at the Wilmington address provided by Wallace, revealed that Wallace had not been living there.

defendant violated the terms of his probation.² A preponderance of evidence means “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”³ Furthermore, the rules of evidence are relaxed in a VOP hearing, and hearsay evidence is admissible.⁴ Under the circumstances, we find no abuse of the Superior Court’s discretion in finding Wallace had violated his probation. The evidence was more than sufficient to sustain the Superior Court’s findings of a VOP, and there is nothing in the record to substantiate Wallace’s claims of either perjury or judicial bias.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

³ *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

⁴ *Id.*